

DOCKET NO.: ISIS-4976
Application No.: 10/038,335
Office Action Dated: September 27, 2005

PATENT

REMARKS

Claims 8-26 are pending in the present application. Claims 8-10 have been allowed. Claims 14,15, 20-22 have been rejected. Claims 16-19 and 23-26 have been objected to. No new matter has been added. Upon entry of the present amendment, claims 8-10 and 14-26 will be pending. Reconsideration is respectfully requested in light of these amendments and the following remarks.

I. Obviousness Type Double Patenting

Claims 14-15 and 20-22 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim1 of commonly assigned U.S. Patent 5,523,389. Examiner suggests that commonly assigned U.S. Patent 5,523,389 would constitute the basis for rejection under 103(a) of the noted claims if the commonly assigned U.S. Patent 5,523,389 qualifies as prior art under 35 USC 102(e), (f) or (g).

Applicant hereby submit that the subject matter of the claimed invention and the commonly assigned U.S. Patent 5,523,389 were commonly owned at the time the claimed invention was conceived. Applicants have filed herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Accordingly, withdrawal of this rejection is respectfully requested.

II. Objection to the Claims

Claims 16-19 and 23-26 have been objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 16-19 depend from claim 14 and claims 23-26 depend from claim 21. As discussed in Section I herein, Applicants submit the rejection of the base claim has been overcome by stating that this application and US Patent 5,523,389 are commonly owned, were commonly owned at the time the claimed invention was conceived, and the filing of the terminal disclaimer herewith. Accordingly, claims 16-19 and 23-26 no longer

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depend from a rejected based claim. Withdrawal of this objection is, therefore, respectfully requested.

III. Conclusion

In view of the foregoing, Applicants respectfully submit that the claims are in condition for allowance. An early notice of the same is earnestly solicited. If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (760) 603-2767.

Respectfully submitted,



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